

Impact of Globalization on the Right to Health as an Instance of Human Rights

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Abstract: Since the advent of globalization, the issue of human rights - especially right to health- and their violation through the process of globalization was discussed. These impotent rights are affected both in positive and negative way by the globalization. Present study scrutinizes these effects and concludes that globalization is functioning as a double edged-sword in this regards.

Keywords: human rights; right to health; right; globalization; law

Introduction

Globalization presents wonderful developments to human being and their societies. Nevertheless, it functions as a double-edged sword: on one hand, it provides benefits and on the other hand, it brings number of problems and risks, which specially affect the human rights. One of these rights is right to health. This paper will study the impact of globalization on human rights and specifically right to health both in positive and negative form. At the beginning, we will see what the human rights and right to health care. Following to that, effects of globalization on them will be studied to find out what are the advantages and disadvantages of globalization for these rights.

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Human Rights and Right to Health

Human rights are commonly understood as those rights, which belong to every body for the mere fact that he or she is a human being. “A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human.” (Augender, 2002, p. 80) That means that one is entitled to those rights the moment he or she born as a human being regardless of any distinguishing characteristics and without any necessity to confirmation by any one and even in the absence of protective laws.

They are "rights" because they are things that people are allowed to be, to do or to have. These rights are there for protection from being harmed or hurt and help human being to live with each other in peace. Human rights allow human beings to fully develop and use their human qualities, intelligence, talents and conscience and to satisfy their spiritual and other needs. Human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles, and other sources of international law. The key internationally agreed list of human rights is contained in the Universal Declaration of Human Rights (UDHR), proclaimed in 1948 by the United Nations General Assembly which based on wide-ranging consultation across different cultures and today, the term ‘human rights’ refers to those rights that have been recognized by the global community in the UDHR.

This document clarifies that which rights are human rights by providing the comprehensive list most of which are available in Covenant on Civil and Political Rights (ICCPR) and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Human rights are enshrined in the preamble to the Universal Declaration of Human Rights, which refers to the dignity and worth of the human person and the promotion of social progress and better standards of life.

One of these precious rights is right to “Health care and social services” which is guaranteed under Article 25 of UDHR and Article 12 of ICESCR.

Article 25 of UDHR clearly states that:

“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical

care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 12 of ICESCR observes that:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Along with these two important instrument, other international human rights instruments are also protecting this right including International Convention on the Elimination of All Forms of Racial Discrimination¹, the Convention on the Elimination of All Forms of Discrimination against Women² the Convention on the Rights of the Child³, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴.

The right to health as provided under Article 25 of UDHR and Article 12 of ICESCR is very important but about the content of this right there are different opinions. However, there is a consensus that right to health does not mean right to be healthy. We can not expect the state to provide people with protection against every possible cause of ill health or disability such as the adverse consequences of genetic diseases, individual susceptibility and the exercise of free will by

¹ Article 5 (e)(iv).

² Articles 11(1)(f) and 12.

³ Article 24.

⁴ Articles 28, 43(1)(e), 45(1)(c), and 70.

individuals who voluntarily take unnecessary risks, including the adoption of unhealthy lifestyles. In addition, this right does not mean that there should be a limitless right to receive medical care for every illness or disability that may be contracted. (Asher, 2004, p. 17.) Therefore, it seems very important to understand what exactly means by right to health.

In this regards The Committee on Economic, Social and Cultural Rights in its General Comment 14¹ explained “The right to the highest attainable standard of health” and clarifies that what exactly means by right to health. This committee observes that right to health does not mean the right to be healthy², but rather that it takes into account the individual’s biological and socioeconomic preconditions, and a State’s available resources. This right must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions in order to achieve the highest attainable standard of health³.

The Committee also stated that right to health on one hand obliges States parties to provide timely and appropriate health care and on the other hand they should address the underlying determinants of health, such as access to safe and portable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health⁴. While doing so, State parties have to apply essential and interrelated element:

“Availability” for the state to provide them;
 “Accessibility” for every body without discrimination;
 “Acceptability” which refers medical ethics and being culturally appropriate;
 “Quality” which addresses that serviced should be scientifically and medically appropriate and of good quality.⁵

Committee also emphasizes that right to health imposes obligation on the states to respect, protect, and fulfill these rights. Therefore they have to refrain from interfering directly or indirectly with the enjoyment of the right to health(respect),

¹ General Comment 14, The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000. It is available in English on: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)40d009901358b0e2c1256915005090be?Opendocument) and in Arabic on: <http://daccessdds.un.org/doc/UNDOC/GEN/G00/439/32/PDF/G0043932.pdf?OpenElement> (last visited on Januvary 2011).

² Ibid, para 8.

³ Ibid, para 9.

⁴ Ibid, para 11.

⁵ Ibid, para 12.

take measures to prevent third parties from interfering with this right (protect) and adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health(fulfill)¹.

However, it is quite possible that States (specialty developing states) argue that they do not have sufficient resources to fulfill their obligations. For that matter, committee recognized some of the obligation as core obligations that must be fulfilled independently of a State party's resources. These obligations include:

Ensure the right of access to health facilities, goods and services on a non-discriminatory basis;

- ensure access to the minimum essential food that is nutritionally adequate and safe;
- ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- provide essential drugs, as defined under the WHO Action Programme on Essential Drugs;
- ensure equitable distribution of all health facilities, goods and services;
- adopt and implement a national public health strategy and plan of action addressing the health concerns of the whole population².

Right to health with these characteristics is very important also in relation to other human rights because as it was observed in Vienna Declaration, human rights are interdependent, indivisible and interrelated³. Therefore violation of right to health will definitely hampers the enjoyment of other rights especially for the poor people.

Concept of Globalization

Globalization refers to a complex phenomenon covering of economic, trade, social, technological, cultural and political relationships. The term has been used as early as 1944, however "Theodore Levitt" is usually credited with its first use in an economic context. In fact, "Globalization" is a controversial phenomenon and it's

¹ Ibid, para 33.

² Ibidt, para 43.

³ See Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights, held in Vienna, 14–25 June 1993.

nature and implications are still vague. Generally speaking globalization is a multi-dimensional process of economic, political, cultural, and ideological change

This concept relies on three forces for development: the role of human migration, international trade, and rapid movements of capital and integration of financial markets.¹ It has different aspects including Industrial globalization, Financial globalization, Political globalization, Informational and Cultural globalization. Because of globalization, it is easy to get any type of information within seconds with the help of television, internet, and telephone, mobiles, and fax. Through media the people know what is meant by human rights and what are their duties.

This concept defines as “a process that encompasses the causes, course, and consequences of transnational and transcultural integration of human and non-human activities.”² This process can affect each and every aspect of human being’s life and law is not an exception as globalization creating new legal norms. It is also defined as a “globalization, which is a consequence of increased mobility, enhanced communications, greatly increased trade and capital flows, and technological developments, opens new opportunities for sustained economic growth and development of the world economy, particularly in developing countries. Globalization also permits countries to share experiences and to learn from one another’s achievements and difficulties, and promotes a cross-fertilization of ideals, cultural values and aspirations. At the same time, the rapid processes of change and adjustment have been accompanied by intensified poverty, unemployment and social disintegration.”³

¹ See <http://tampa2012gop.com/globalization-state-and-human-rights/>.

² Al-Rodhan Nayef R.F., (2006), “Definitions of Globalization: A Comprehensive Overview and a Proposed Definition”, (GCSP) available at http://www.google.co.in/url?sa=t&source=web&cd=1&ved=0CBUQFjAA&url=http%3A%2F%2Fwww.gcsp.ch%2Fcontent%2Fdownload%2F1267%2F9834%2Ffile%2FDefinitions%2520of%2520Globalization%2520-%2520A%2520Comprehensive%2520Overview%2520and%2520a%2520Proposed%2520Definition.pdf&rct=j&q=globalization%20definition%20by%20authors&ei=uAqdTleoKoOMvQPv39CdDQ&usg=AFQjCNGPs1LU_ufjvX6DVjYQfWZ636hVUA&cad=rja.

³ Copenhagen Declaration and Programme of Action, para 14, adopted at World Summit for Social Development, Copenhagen 1995.

Impact of Globalization on Human Rights

In fact, development, in any aspect, comes to serve mankind and if someone can not enjoy these basic human rights, any development is useless. Globalization is nothing but development and what should be at the center of attention in this process are obviously human beings with all of their human rights.

The question here is that whether the globalization with all its components helps or hampers the enjoyment of human rights commitments of the governments. Generally speaking, globalization has both positive and negative effects on human rights. It is said that globalization is turning the world into one global village in which all people are increasingly interconnected and all the fences or barriers are removed, so that the world witnesses a new state of fast and free flow of people, capital, goods, and ideas. Then the world would be witnessing unprecedented enjoyment of human rights every where because globalization is bringing prosperity to all the corners of the globe together with the spread of the highly cherished values of democracy, freedom and justice (Friedman, 1999).

Looking into this beautiful picture, one may be satisfied that globalization is nothing but a savior of human rights. But this is only one side of the coin. Once we see globalization as a tool of turning the world into a global village by the rule of profit then all the human rights of the people in the world would seriously be threatened. In process of globalization, if there is any strike of laborers, State increases restrictions on civil and political rights of the workers basic rights, such as the right to life, in an effort to control the labour force. Moreover, globalization brought social changes resulting in increscent of ethnic and religious conflict, which increases the violence and hampering human rights. In addition focusing on economic development and competitiveness harms human rights of vulnerable groups such as women, children, poor and migrant workers. Globalization on one hand provides an increased standard of living to developing countries and wealth to "First World countries" and on the other hand, it suppresses human rights in developing societies, by claiming to bring prosperity. "Negative effects include cultural assimilation via cultural imperialism, the export of artificial wants, and the destruction or inhibition of authentic local and global community, ecology and cultures."¹

¹ <http://www.eljournal.com/?p=540>.

Globalization and Right to Health

One of the most important human rights is right to health without which enjoying other human rights is defective. It is a duty of the State to respect and fulfill the right to Health and to protect this right from violation. This violation can be through acts of commission and by acts of omission. Acts of commission include formal repeal or suspension of legislation that is necessary for the continued enjoyment of the right to health and adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations affecting the right to health (Asher, 2004, p 39) whereas violations of this right through omission by failure by states to take necessary actions or measures arising from their legal obligations for example taking appropriate and deliberate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health or having a national policy on occupational safety, health, and occupational health services; and to enforce relevant legislation and introduce and enforce adequate laws. (Asher, 2004, p 39)

As far as right to health is concerned, like any other human rights, globalization is functioning as a double-edged sword. It is both beneficial as well as harmful for enjoyment of such right.

Globalization showed vulnerabilities of countries to public health threats that were previously non-existent, latent or ignored. It is argued that "Governments faced mounting public health threats with the realization that globalization constrained policy control over many determinants of health, limiting options to the detriment of population and individual health." (Fidler, 2007, p 52) Apart from this by changing the whole world to the global village, globalization brought interconnectedness between the local and the global policies regarding health and pushes all governments to address the international and transnational contexts of globalized health issues by taking special policies. Economic growth of the countries has a strong effect on their poverty reduction. The open exchange of ideas and information is the way to raise the knowledge about the new drugs and preventive measures to escape illness.¹

Globalization also forces health promotion and presents access to knowledge, availability of a greater range of foods and consumer goods, advances in medical

¹ For example, tragically millions of children die of diarrhea because parents lack information on simple oral rehydration techniques.

science, development of new technologies, including the provision of improved social conditions regarding better health, new drugs and new treatments etc.

However, it is argued that all these benefits are differentially distributed, both across and within societies, reflecting structural asymmetries in the geometry of global power relations. (Evans, 2002, p. 207) Patterns of hierarchy and stratification mediate across sites of power while the consequences of globalization are experienced unevenly and differently.¹ Globalization increasingly exposes people to health risks. With increscent of flow of people and goods worldwide, the risks of spread of infectious and epidemic diseases rise and it is poor and vulnerable groups which are victims of the globalization. In addition to these, nuclear weapons proliferation, environmental pollution, natural disasters, etc are other side effects of the process.

Along with all these, in today's world with the emergence of globalization the function of delivering health services is granted to the non-state actors specially non-governmental agencies such as private health care providers, health insurance companies, health management organizations etc. Apart from this in many states, specially developing states, health-related policy decisions are subjected to the influence of international trade regimes, loans, and development assistance. This results in reduction in the health status of the poor and other vulnerable and disadvantaged groups. How ever in fact in the era of globalization, the main threat to the enjoyment of human rights comes not from the state, as before, but from Transnational Corporations.

For instance in Nestle case², Nestle company, encouraged and organized widespread distribution of powdered milk in the developing countries. However, instead of being a factor for progress, this campaign contributed of causing illnesses and malnutrition. The quality of the milk was not contested, it was the same as one used for feeding the infants in the developed world. The reason of mortality and diseases was simple; lack of information. The powder milk to have

¹ The example is given that the research and development programmes of the major pharmaceutical companies concentrate on finding products for medical conditions associated with the concerns of the wealthy, like obesity, stress and baldness, rather than life-threatening diseases associated with the poor, like tuberculosis!

² Nestlé's perceived marketing strategy was first written about in New Internationalist magazine in 1973 and in a booklet called The Baby Killer, published by the British non-governmental organization War On Want in 1974. Nestlé attempted to sue the publisher of a German-language translation (Third World Action Group) for libel. After a two-year trial, the court found in favour of Nestlé because they could not be held responsible for the infant deaths 'in terms of criminal law

beneficial effects, the baby's bottle must be sterilized, there must be drinkable water, and the accompanying instructions for using the bottle must be followed rigorously. The only thing Nestlé must have done was tailoring advertising campaign to provide information to mothers in those countries. But it never happened as business ignores the local conditions and interests and straightforwardly follows its narrow goals the result can be as drastic as transformation of life-saving product into a life-destroying one.¹

In Ecuador, Texaco oil operations have reportedly spilled million gallons of oil and dumped billions of gallons of untreated toxic brine into the water and soil.² In Indonesia, investigators have accused Freeport-McMarron of dumping hundreds of thousands of tons of toxic mine tailings into local waterways, destroying the local river, flooding surrounding forests, and polluting lakes and ground water³. "Shell's Nigeria" operations in Nigeria are reported to destruction of wildlife and biodiversity, loss of fertile soil, pollution of air and drinking water, degradation of farmland and damage to aquatic ecosystems, all of which have caused serious health problems for the inhabitants of areas surrounding oil production and soaking the groundwater with oil.⁴ More familiar case is "Bhopal gas tragedy"⁵. Leakage of methyl isocyanate gas and other chemicals from the plant, resulted in the exposure of hundreds of thousands of people and caused many short terms and long term health effects in surrounding areas.⁶

¹ See Natsvlishvili, Ana, (2007) "The impact of globalization on human rights in the developing world: Transnational corporations and human rights – the masterpieces of globalization in the era of democratized violence", Central European University, available at http://www.nottingham.ac.uk/shared/shared_levevents/conference/2007_March_PG_Natsvlishvili.pdf

² From 1965-1993, Texaco participated in a consortium to develop the Lago Agrio oil field in Ecuador. It has been accused of extensive environmental damage from these operations, and faces legal claims from both private plaintiffs and the government of Ecuador. Since 1993, lawyers representing local residents have sought to force former well operator Texaco and its now parent company Chevron Corporation to clean the area and to provide for the care of those allegedly affected

³ See Stephens Beth (2002), "The amorality of profit: transnational corporations and human rights", 20 Berkeley J. Int'l L. 45 Berkeley Journal of International Law.

⁴ Ibid.

⁵ The Bhopal disaster (also referred to as the Bhopal gas tragedy) is the world's worst industrial catastrophe. It occurred on the night of December 2–3, 1984 at the Union Carbide India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh, India. Justice Verma, the former chairman of National Human Rights Commission in one occasion stated that Bhopal Gas Tragedy is the biggest example of human rights violation in the world".

⁶ For more information see http://en.wikipedia.org/wiki/Bhopal_disaster#Health_effects

In the International Conference on Financing for Development (the Monterrey Conference)¹ following impact of globalization on right to health are expressed:

- While overseas development assistance (ODA) ‘filled in some financing gaps for the poorest countries, nothing could compensate for international trade and investment regimes that worked against them’; and
- Deep concern expressed over an international trade regime that allows developed countries to selectively protect certain sectors while not allowing developing countries to do the same’.

In fact, globalization has been cited as a contributing factor in violations of the right to life, the right to protection of health, the right to safe and healthy working conditions and freedom of association in many countries (Leary, 2003, p. 268).

As regards side effects of globalization toward right to health, international community came to know that there is a requirement of some actions to regulate the process of globalization in a way that has less harm to right to health. In September 2000, 189 countries (out of 195), jointly signed the United Nations Millennium Declaration, which put forward 8 Millennium Development Goals (MDGs) which has to be achieved by 2015. These goals include 3 health indicators, and another 3 indicators are also health-related. This shows the important of this issue for international community.²

Since the 1990s concept of Global Governance came to existence which is defined as a “governing mechanism for a series of activities in the field of international politics, although not formally authorized, is an effective tool” (Rosenau, 2001). The mechanism is a collection of rules and institutions that controls, attains goals and impacts cross borders in all dimensions of human activity — from home to international organizations, even including those rules and institutions involved in the more interdependent, and rapidly growing global network. As far as globalization in the area of health is concerned, scholars put the phenomenon of “Global Health Governance” forward. According to this concept more importance is attached to global health by international organizations and state governments through designing national and global health development strategies. In addition a

¹ International Conference on Financing for Development. A/Conf.198/11.

² The Goals include Eradicating extreme poverty and hunger, Achieving universal primary education, Promoting gender equality and empower women, Reducing child mortality rate, Improving maternal health, Combating HIV/AIDS, malaria, and other diseases, Ensuring environmental sustainability and Developing a global partnership for development. For more information see http://en.wikipedia.org/wiki/Millennium_Development_Goals

number of international health organizations and mechanisms have been established which are governing international cooperation.¹

Conclusion

Looking into effects of globalization on the human rights, one can understand that as far as human rights and specially right to health is concerned, globalization is helpful as well as harmful in this area. Herein the point is that as the globalization is inevitable, the only way is to protect the precious rights of human being in to develop strategies reducing the detrimental effects of globalization on that. Disease flows across borders and poverty is an issue which undermines the efforts for betterment of health situation which shows the poor must always be at the forefront in any endeavour to ensure that globalization is a force for prosperity for all. The capabilities of governments in developing countries should be strengthen to represent the interests of their people at the international level. In fact, health can no more be managed by a single country and there is a vital need for global health governance composed by governments and intergovernmental organizations for protection of this important human right of mankind through collective action.

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¹ For more information see Jian-gang NIE and Juan LI “Globalized health and its governance”, available at <http://www.cmj.org/periodical/PaperList.asp?id=LW201075504340804674>

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